

2005 DRAFTING REQUEST

Bill

Received: 12/09/2004

Received By: **agary**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Percy**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Transportation - traffic laws**

Extra Copies: **PJH**

Submit via email: **NO**

Pre Topic:

DOA:.....Percy, BB0300 -

Topic:

Habitual traffic offenders

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/1	agary 12/15/2004	jdye 12/28/2004	rschluet 12/28/2004	_____	lnorthro 12/28/2004		State
/2	agary 01/26/2005	jdye 01/26/2005	jfrantze 01/27/2005	_____	lemery 01/27/2005		

FE Sent For:

<END>

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1/26 jld
1/26 Jb
1/26 Jb/ch
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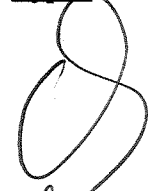
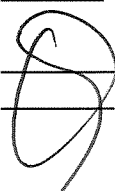
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/?	agary	1/12/28 jld					
			12/28	<END>			

FE Sent For:

2005-07 Budget Bill Statutory Language Drafting Request

- Topic: Habitual Traffic Offenders
- Tracking Code: BB0300
- SBO team: Tax and Justice Team
- SBO analyst: Doug Percy
 - Phone: 266-1039
 - Email: doug.percy@doa.state.wi.us
- Agency acronym: (Public Defender) SPD
- Agency number: 550

CORRESPONDENCE\MEMORANDUM**STATE OF WISCONSIN**
Department of Administration**Date:** December 8, 2004**To:** Steve Miller, Chief
Legislative Reference Bureau (LRB)**From:** Doug Percy, Executive Budget and Policy Analyst
State Budget Office**Subject:** Statutory Language Request

Modify the habitual traffic offender criteria based on the attached sheet.

<u>Issue</u>	<u>Status</u>	<u>Analyst</u>	<u>Priority</u>
Habitual Traffic Offenders	Needs drafting	Doug	High

LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL

Wisconsin Department of Transportation

2005-2007 BIENNIUM

DT1586 3/2004

Instructions: Complete this form for any budget/non-budget legislative initiative for which a Division requests the Secretary's Office (SO) approval. Check the budget box only if the proposal has a fiscal impact on department expenditures or revenue. This form must be signed by the Division Administrator(s). Include this form with your budget submittal materials or return two completed copies to the Office of Policy & Budget (OPB), Attention: Paul Hammer. One copy will be retained by OPB and the other copy provided to the Office of General Counsel. The form is available in the department forms catalog on dotnet.

Short Title of Topic Modify Habitual Traffic Offender Law			
Type of Proposal <input type="checkbox"/> Budget <input checked="" type="checkbox"/> Non-Budget	OGC OFFICE USE ONLY "T" Number Assigned "B" Number Assigned "NB" Number Assigned		
Date Submitted September 22, 2004	Division(s) Motor Vehicles		
OPB Contact Person Karen Baetsen	Area Code - Telephone Number (608) 266-0179		
Lead Division Contact Person Anna Biermeier	Area Code - Telephone Number 608-266-9901		
OGC Contact Person Joe Maassen	Area Code - Telephone Number (608) 267-7364		
Define Problem Precisely The purpose of the Habitual Traffic Offender law was to remove the most dangerous drivers from the state's roads. A 2004 study of Habitual Traffic Offenders (HTOs) indicated that 79% of HTOs were based on a minor offenses. 37% of all convictions on HTO records were for Operating after Revocation or Operating While Suspended (s.343.44). Initially, violations of the 343.44 Statute were considered major offenses. In 1998, state law was changed to make them minor violations. While some drivers, who drive after revocation or while suspended are risky drivers, others may be caught driving after revocation or suspension without exhibiting any bad driving. The stop initiating the citation is frequently caused by "no visible registration" or an equipment violation. The underlying reason for the Operating After Revocation or the Operating While Suspended is often a failure to pay a forfeiture.			
Description of Proposed Change Amend s.351 to limit the definition of "moving violation" to violations of Chapter 346, Wis. Stats., or ordinances enacted in accordance with Sec. 349.06 or the law of a federally recognized American Indian tribe or band in Wisconsin which is in conformity with Chapter 346.			
Justification for Change This change would re-focus the Habitual Traffic Offender law on drivers with the riskiest driving behavior. It would reduce the number of five year revocations for drivers whose underlying problem is a failure to pay a forfeiture. Failure to pay forfeitures represent more than 50% of all driver license suspensions annually. The increase in these failure to pay suspensions has increased the number of drivers operating while suspended and subsequently operating after revocation. This increase has resulted in persons who are not risky drivers being treated the same as drivers with four Operating while Intoxicated convictions.			
Describe any legislative history and related statutory language None			

(Division Administrator Signature)

(Date)

(Division Administrator Signature)

(Date)

(Division Administrator Signature)

(Date)

TODAY 12/28

in 12/15

ARG:....

Jld
D-Note

DOA:.....Percy, BB0300 - Habitual traffic offenders

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

don't gen

- 1 AN ACT ...; relating to: traffic violations for purposes of determining whether a
2 person is a habitual traffic offender.

Analysis by the Legislative Reference Bureau

TRANSPORTATION

DRIVERS AND MOTOR VEHICLES

Under current law, DOT must revoke a person's motor vehicle operating privilege for five years upon receipt of a record of conviction that brings the person within the definition of a habitual traffic offender or repeat habitual traffic offender. A person is a habitual traffic offender if the person, within a five-year period, has accumulated at least four convictions of specified offenses of a more serious nature or at least 12 convictions of moving violations of traffic regulations or of specified crimes related to the operation of a motor vehicle. For purposes of the habitual traffic offender law, the term "traffic regulation" means traffic-related provisions for which the penalty is a forfeiture (a civil offense), but the term "moving violation" is not defined. Two years after a habitual traffic offender's operating privilege is revoked, the person is eligible for an occupational license. A repeat habitual traffic offender is a person who has obtained an occupational license after having his or her operating privilege revoked as a habitual traffic offender and who is convicted of certain offenses, including moving violations of traffic regulations, within specified time periods after obtaining the occupational license.

This bill replaces the phrase "moving violations of ... traffic regulations" in the definition of habitual traffic offender with the phrase "violations of ch. 346."

Accordingly, a habitual traffic offender is a person who, within a five-year period, has accumulated at least four convictions of specified offenses of a more serious nature or at least 12 convictions of violations of law, punishable by either civil or criminal penalty, classified under the chapter of the statutes designated for rules of the road or of specified crimes related to the operation of a motor vehicle. ✓

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 351.02 (1) (b) of the statutes is amended to read: ✓

2 351.02 (1) (b) Twelve or more convictions of ~~moving~~ violations of ch. 346, ✓
3 including violations under par. (a), of ~~traffic regulations~~ ✓ or of crimes in the operation
4 of a motor vehicle which are required to be reported under s. 343.28 or 345.37 (5).

History: 1979 c. 333; 1983 a. 189 s. 329 (34); 1983 a. 459, 525, 535; 1985 a. 71, 337; 1987 a. 3, 399; 1989 a. 56, 105; 1991 a. 39; 1995 a. 448; 1997 a. 84, 258; 1999 a. 9; 2003 a. 97.

5 SECTION 2. 351.02 (1) (f) of the statutes is amended to read: ✓

6 351.02 (1) (f) The department may, by rule, exempt specific ~~moving~~ violations
7 of ch. 346 ✓ from being counted under par. (b) if the department determines that the
8 violation is a petty offense, except that the department may not exempt any violation
9 for which the department assigns demerit points under s. 343.32 (2) or rules
10 promulgated thereunder.

History: 1979 c. 333; 1983 a. 189 s. 329 (34); 1983 a. 459, 525, 535; 1985 a. 71, 337; 1987 a. 3, 399; 1989 a. 56, 105; 1991 a. 39; 1995 a. 448; 1997 a. 84, 258; 1999 a. 9; 2003 a. 97.

11 SECTION 3. 351.02 (2) of the statutes is repealed.

12 SECTION 9348. **Initial applicability; transportation.** ✓

13 (1) HABITUAL TRAFFIC OFFENDERS. The treatment of section 351.02 (1) (b) ✓ and (f) ✓
14 and (2) ✓ of the statutes first applies to violations committed on the effective date of
15 this subsection, ✓ but does not preclude the counting of other violations as prior

1 violations for purposes of revocation of operating privileges by the department of
2 transportation or review by a court.

3 (END)

✓
D - Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1192/1dn

ARG:.....

jld

ATTN: Doug Percy

The drafting instructions request an amendment to the definition of "moving violation" for purposes of ch. 351, the habitual traffic offender law. There is no definition of "moving violation" for purposes of ch. 351. The only definition of the term occurs in s. 343.01 (2) (cg) and is applicable to chs. 343 and 344, but not ch. 351. Since the intent seems to be to modify the scope of the definition of "habitual traffic offender" in s. 351.02, instead of creating a new definition (of "moving violation") to modify another definition (of "habitual traffic offender"), I have simply amended the definition of "habitual traffic offender."

Chapter 346 includes violations punishable by forfeiture (civil penalty) and violations punishable by fine (criminal penalty). I interpret the drafting instructions to seek modification of the term "moving violation" in s. 351.02 (1) (b) to cover any violation of ch. 346, both civil and criminal. I note that convictions counted under existing s. 351.02 (1) (b) are limited to violations punishable by civil penalty. Do you want this redrafted to cover only violations of ch. 346 punishable by civil penalty? If so, I will reword amended s. 351.02 (1) (b) of the draft and will not repeal s. 351.02 (2).

The drafting instructions include language related to violations of local ordinances and laws of federally recognized American Indian tribes or bands in this state. Under s. 351.02 (1) (c), these violations are already incorporated into s. 351.02 (1) (b).

Given the change to s. 351.02 (1) (b) in the draft, do you want to retain s. 351.02 (1) (f)?

In reviewing the portion of the drafting instructions titled "define problem precisely" and "justification for change," I am uncertain to what extent the requested statutory change will remedy the described problem. I believe this draft will address the described problem only with respect to operating while suspended but not with respect to operating after revocation (which, if you judge by the penalty, continues to be considered a serious offense and not a minor violation). Under s. 343.44 (1) (a) and (2) (a), operating while suspended is punishable by forfeiture, a civil penalty. Under s. 343.44 (1) (b) and (2) (b), operating after revocation is punishable by fine or imprisonment or both, which are criminal penalties. Accordingly, under this draft, operating while suspended will no longer be counted as a conviction under s. 351.02 (1) (b) but operating while revoked will be (as a crime required to be reported under s. 353.28). Is this okay?

The attached draft does not make any change to s. 343.44 (2) (c).✓

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1192/1dn
ARG:jld:rs

ATTN: Doug Percy

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Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Gary, Aaron
Sent: Wednesday, January 26, 2005 10:57 AM
To: Percy, Doug
Subject: HTO changes - LRB1192 (BB0300)

Doug,

The major change that DOT suggested (assuming we received the same suggested changes) was to eliminate the last clause in s. 351.02 (1) (b) (crimes in the operation of a motor vehicle reported to DOT). I believe this suggestion arises from my drafter's note comment that the HTO draft would accomplish the desired changes with respect to OAS but not with respect to OAR because OAR remained a crime.

Under current law, this clause in par. (b) applies to convictions for moving traffic violations that are crimes under chs. 341 to 349. Many crimes are either included under par. (a) or under par. (b) as amended in this draft, so there would be no substantive change as to these crimes. However, to the extent a moving traffic violation is a crime not listed in par. (a) and appearing in chs. 341 to 345 or 347 to 349, these convictions would no longer be counted for HTO purposes. The only potential examples of crimes that I found that might no longer be counted toward HTO status if DOT's suggested change is made are driving a commercial motor vehicle while not licensed to do so and driving a school bus while not licensed to do so.

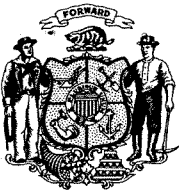
I also note that inclusion of the OAR draft (LRB-1652) in the budget bill may alleviate to some extent DOT's concern in making this suggested change to the HTO draft.

Let me know what changes you want to the HTO draft. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

1/26 H/c w/ Doug

• make DOT suggested
change re par. (b)



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1192/11 2

ARG:jld:rs

R M R

DOA:.....Percy, BB0300 - Habitual traffic offenders

FOR 2005-07 BUDGET -- NOT READY FOR INTRODUCTION

Don't gen

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 351.02 (1) (b) of the statutes is amended to read:

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SECTION 9348. Initial applicability; transportation.

(1) HABITUAL TRAFFIC OFFENDERS. The treatment of section 351.02 (1) (b) and (f) and (2) of the statutes first applies to violations ~~committed~~ on the effective date of this subsection, but does not preclude the counting of other violations as prior violations for purposes of revocation of operating privileges by the department of transportation or review by a court.

(END)

for which reports of conviction are received by the department of transportation



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1192/2

ARG:jld:jf

DOA:.....Percy, BB0300 - Habitual traffic offenders

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